

House File 2067 - Introduced

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BY WOLFE

A BILL FOR

1 An Act relating to the possession, delivery, or possession with
2 intent to deliver marijuana, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 124.401, subsection 5, Code 2018, is
2 amended to read as follows:

3 5. a. (1) It is unlawful for any person knowingly or
4 intentionally to possess a controlled substance unless such
5 substance was obtained directly from, or pursuant to, a valid
6 prescription or order of a practitioner while acting in the
7 course of the practitioner's professional practice, or except
8 as otherwise authorized by this chapter. Any person who
9 violates this subsection is guilty of a serious misdemeanor
10 for a first offense. A person who commits a violation of
11 this subsection and who has previously been convicted of
12 violating this chapter or chapter 124B or 453B, or chapter
13 124A as it existed prior to July 1, 2017, is guilty of an
14 aggravated misdemeanor. A person who commits a violation of
15 this subsection and has previously been convicted two or more
16 times of violating this chapter or chapter 124B or 453B, or
17 chapter 124A as it existed prior to July 1, 2017, is guilty of a
18 class "D" felony.

19 (2) A violation of paragraph "b" shall not be considered a
20 previous conviction for purposes of enhancing a penalty under
21 this paragraph.

22 b. ~~If the controlled substance is marijuana, the punishment~~
23 ~~shall be by imprisonment in the county jail for not more than~~
24 ~~six months or by a fine of not more than one thousand dollars,~~
25 ~~or by both such fine and imprisonment for a first offense. If~~
26 ~~the controlled substance is marijuana and the person has been~~
27 ~~previously convicted of a violation of this subsection in which~~
28 ~~the controlled substance was marijuana, the punishment shall be~~
29 ~~as provided in section 903.1, subsection 1, paragraph "b". If~~
30 ~~the controlled substance is marijuana and the person has been~~
31 ~~previously convicted two or more times of a violation of this~~
32 ~~subsection in which the controlled substance was marijuana, the~~
33 ~~person is guilty of an aggravated misdemeanor offense shall~~
34 ~~be classified as a simple misdemeanor punishable by up to the~~
35 ~~maximum fine amount provided in section 903.1, subsection~~

1 l, paragraph "a", but shall not be punishable by a term of
2 imprisonment.

3 c. All or any part of a sentence imposed pursuant to
4 this subsection may be suspended and the person placed upon
5 probation upon such terms and conditions as the court may
6 impose including the active participation by such person in a
7 drug treatment, rehabilitation or education program approved
8 by the court.

9 d. If a person commits a violation of **this subsection,**
10 except for a violation of this subsection in which the
11 controlled substance is marijuana, the court shall order
12 the person to serve a term of imprisonment of not less than
13 forty-eight hours. Any sentence imposed may be suspended, and
14 the court shall place the person on probation upon such terms
15 and conditions as the court may impose. If the person is not
16 sentenced to confinement under the custody of the director of
17 the department of corrections, the terms and conditions of
18 probation shall require submission to random drug testing.
19 If the person fails a drug test, the court may transfer the
20 person's placement to any appropriate placement permissible
21 under the court order.

22 e. If the controlled substance is amphetamine, its salts,
23 isomers, or salts of its isomers, or methamphetamine, its
24 salts, isomers, or salts of its isomers, the court shall order
25 the person to serve a term of imprisonment of not less than
26 forty-eight hours. Any sentence imposed may be suspended,
27 and the court shall place the person on probation upon such
28 terms and conditions as the court may impose. The court may
29 place the person on intensive probation. However, the terms
30 and conditions of probation shall require submission to random
31 drug testing. If the person fails a drug test, the court may
32 transfer the person's placement to any appropriate placement
33 permissible under the court order.

34 Sec. 2. Section 124.410, Code 2018, is amended to read as
35 follows:

1 **124.410 Accommodation offense.**

2 In a prosecution for unlawful delivery or possession with
3 intent to deliver marijuana, if the prosecution proves that
4 the defendant violated the provisions of section 124.401,
5 subsection 1, by proving that the defendant delivered or
6 possessed with intent to deliver ~~one-half ounce~~ forty-two and
7 one-half grams or less of marijuana which was not offered for
8 sale, the defendant is guilty of an accommodation offense and
9 rather than being sentenced as if convicted for a violation
10 of section 124.401, subsection 1, paragraph "d", shall be
11 sentenced as if convicted of a violation of section 124.401,
12 subsection 5, paragraph "a". An accommodation offense may be
13 proved as an included offense under a charge of delivering or
14 possessing with the intent to deliver marijuana in violation
15 of section 124.401, subsection 1. This section does not apply
16 to hashish, hashish oil, or other derivatives of marijuana as
17 defined in section 124.101, subsection 20.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to the possession, delivery, or possession
22 with intent to deliver marijuana.

23 The bill modifies the penalty for the possession of
24 marijuana. Under the bill, if a person is convicted of
25 possession of marijuana, the person commits a simple
26 misdemeanor punishable by a fine of at least \$65 but not
27 more than \$625, but shall not be punishable by a term of
28 imprisonment. The bill also strikes provisions enhancing
29 penalties for multiple convictions for the possession of
30 marijuana.

31 Currently, if a person commits first offense possession
32 of marijuana, the offense is punishable by imprisonment in
33 the county jail for not more than six months or by a fine
34 of not more than \$1,000, or by both. If a person commits a
35 second offense possession of marijuana under current law, the

1 person commits a serious misdemeanor, and a third or subsequent
2 offense is punishable as an aggravated misdemeanor.

3 The bill does not modify the penalty revoking a person's
4 driver's license for 180 days if the person is sentenced for
5 possession of marijuana.

6 The bill also modifies the criminal offense of accommodation
7 which relates to the unlawful delivery or possession with
8 intent to deliver marijuana. Under the bill, a person who
9 unlawfully delivers or possesses with the intent to deliver
10 42.5 grams or less of marijuana which was not offered for
11 sale is guilty of an accommodation offense and the offense
12 shall be punishable as a serious misdemeanor rather than a
13 class "C" felony. Currently, a person is not eligible for
14 an accommodation offense if the offense involves more than
15 one-half ounce (14.17 grams) of marijuana.

16 A simple misdemeanor is punishable by confinement for no
17 more than 30 days or a fine of at least \$65 but not more than
18 \$625 or by both. A serious misdemeanor is punishable by
19 confinement for no more than one year and a fine of at least
20 \$315 but not more than \$1,875. An aggravated misdemeanor is
21 punishable by confinement for no more than two years and a fine
22 of at least \$625 but not more than \$6,250.